

EXHIBIT Z

1 Steven P. McDonald, State Bar No. 077368
2 Christopher J. Martin, State Bar No. 249129
3 THE MCDONALD LAW FIRM, LC
4 7855 Fay Avenue, Suite 250
5 La Jolla, California 92037
6 Telephone No.: 858.551.1185
7 Fax No.: 858.551.1186

8 Courtney Ann Coyle, State Bar No. 174934
9 LAW OFFICE OF COURTNEY ANN COYLE
10 1609 Soledad Avenue
11 La Jolla, California 92037-3817
12 Telephone No.: 858.454.8687
13 Fax No.: 858.454.8493

14 Kimberly R. Mettler, State Bar No. 231972
15 VIEJAS BAND of KUMEYAAY INDIANS
16 Viejas Office of Legal Affairs
17 5000 Willows Road
18 Alpine, CA 91901
19 Telephone No.: 619.659.1710
20 Fax No.: 619.659.1970

21 Attorneys for Petitioner and Plaintiff Viejas Band of Kumeyaay Indians

22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

29 VIEJAS BAND OF KUMEYAAY INDIANS,
30 a federally recognized Indian Tribe,

31 Petitioner and Plaintiff,

32 v.

33 PADRE DAM MUNICIPAL WATER
34 DISTRICT, a public agency; and DOES 1
35 through 10, inclusive,

36 Respondents and Defendants,

Case No. **37-2010-00083203-CU-TT-CTL**

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000
1001
1002
1003
1004
1005
1006
1007
1008
1009
1010
1011
1012
1013
1014
1015
1016
1017
1018
1019
1020
1021
1022
1023
1024
1025
1026
1027
1028
1029
1030
1031
1032
1033
1034
1035
1036
1037
1038
1039
1040
1041
1042
1043
1044
1045
1046
1047
1048
1049
1050
1051
1052
1053
1054
1055
1056
1057
1058
1059
1060
1061
1062
1063
1064
1065
1066
1067
1068
1069
1070
1071
1072
1073
1074
1075
1076
1077
1078
1079
1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107
1108
1109
1110
1111
1112
1113
1114
1115
1116
1117
1118
1119
1120
1121
1122
1123
1124
1125
1126
1127
1128
1129
1130
1131
1132
1133
1134
1135
1136
1137
1138
1139
1140
1141
1142
1143
1144
1145
1146
1147
1148
1149
1150
1151
1152
1153
1154
1155
1156
1157
1158
1159
1160
1161
1162
1163
1164
1165
1166
1167
1168
1169
1170
1171
1172
1173
1174
1175
1176
1177
1178
1179
1180
1181
1182
1183
1184
1185
1186
1187
1188
1189
1190
1191
1192
1193
1194
1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224
1225
1226
1227
1228
1229
1230
1231
1232
1233
1234
1235
1236
1237
1238
1239
1240
1241
1242
1243
1244
1245
1246
1247
1248
1249
1250
1251
1252
1253
1254
1255
1256
1257
1258
1259
1260
1261
1262
1263
1264
1265
1266
1267
1268
1269
1270
1271
1272
1273
1274
1275
1276
1277
1278
1279
1280
1281
1282
1283
1284
1285
1286
1287
1288
1289
1290
1291
1292
1293
1294
1295
1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325
1326
1327
1328
1329
1330
1331
1332
1333
1334
1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363
1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389
1390
1391
1392
1393
1394
1395
1396
1397
1398
1399
1400
1401
1402
1403
1404
1405
1406
1407
1408
1409
1410
1411
1412
1413
1414
1415
1416
1417
1418
1419
1420
1421
1422
1423
1424
1425
1426
1427
1428
1429
1430
1431
1432
1433
1434
1435
1436
1437
1438
1439
1440
1441
1442
1443
1444
1445
1446
1447
1448
1449
1450
1451
1452
1453
1454
1455
1456
1457
1458
1459
1460
1461
1462
1463
1464
1465
1466
1467
1468
1469
1470
1471
1472
1473
1474
1475
1476
1477
1478
1479
1480
1481
1482
1483
1484
1485
1486
1487
1488
1489
1490
1491
1492
1493
1494
1495
1496
1497
1498
1499
1500
1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515
1516
1517
1518
1519
1520
1521
1522
1523
1524
1525
1526
1527
1528
1529
1530
1531
1532
1533
1534
1535
1536
1537
1538
1539
1540
1541
1542
1543
1544
1545
1546
1547
1548
1549
1550
1551
1552
1553
1554
1555
1556
1557
1558
1559
1560
1561
1562
1563
1564
1565
1566
1567
1568
1569
1570
1571
1572
1573
1574
1575
1576
1577
1578
1579
1580
1581
1582
1583
1584
1585
1586
1587
1588
1589
1590
1591
1592
1593
1594
1595
1596
1597
1598
1599
1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611
1612
1613
1614
1615
1616
1617
1618
1619
1620
1621
1622
1623
1624
1625
1626
1627
1628
1629
1630
1631
1632
1633
1634
1635
1636
1637
1638
1639
1640
1641
1642
1643
1644
1645
1646
1647
1648
1649
1650
1651
1652
1653
1654
1655
1656
1657
1658
1659
1660
1661
1662
1663
1664
1665
1666
1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677
1678
1679
1680
1681
1682
1683
1684
1685
1686
1687
1688
1689
1690
1691
1692
1693
1694
1695
1696
1697
1698
1699
1700
1701
1702
1703
1704
1705
1706
1707
1708
1709
1710
1711
1712
1713
1714
1715
1716
1717
1718
1719
1720
1721
1722
1723
1724
1725
1726
1727
1728
1729
1730
1731
1732
1733
1734
1735
1736
1737
1738
1739
1740
1741
1742
1743
1744
1745
1746
1747
1748
1749
1750
1751
1752
1753
1754
1755
1756
1757
1758
1759
1760
1761
1762
1763
1764
1765
1766
1767
1768
1769
1770
1771
1772
1773
1774
1775
1776
1777
1778
1779
1780
1781
1782
1783
1784
1785
1786
1787
1788
1789
1790
1791
1792
1793
1794
1795
1796
1797
1798
1799
1800
1801
1802
1803
1804
1805
1806
1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910
1911
1912
1913
1914
1915
1916
1917
1918
1919
1920
1921
1922
1923
1924
1925
1926
1927
1928
1929
1930
1931
1932
1933
1934
1935
1936
1937
1938
1939
1940
1941
1942
1943
1944
1945
1946
1947
1948
1949
1950
1951
1952
1953
1954
1955
1956
1957
1958
1959
1960
1961
1962
1963
1964
1965
1966
1967
1968
1969
1970
1971
1972
1973
1974
1975
1976
1977
1978
1979
1980
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020
2021
2022
2023
2024
2025
2026
2027
2028
2029
2030
2031
2032
2033
2034
2035
2036
2037
2038
2039
2040
2041
2042
2043
2044
2045
2046
2047
2048
2049
2050
2051
2052
2053
2054
2055
2056
2057
2058
2059
2060
2061
2062
2063
2064
2065
2066
2067
2068
2069
2070
2071
2072
2073
2074
2075
2076
2077
2078
2079
2080
2081
2082
2083
2084
2085
2086
2087
2088
2089
2090
2091
2092
2093
2094
2095
2096
2097
2098
2099
2100
2101
2102
2103
2104
2105
2106
2107
2108
2109

1) comply with all mitigation measures in the Project's (as defined below) Mitigation Monitoring and Reporting Program ("MMRP"), 2) comply with California Health and Safety Code ("H&SC") section 7050.5, 3) consider significant new information and prepare subsequent documents under the California Environmental Quality Act ("CEQA"), and 4) set aside, void or annul the Mitigated Negative Declaration ("MND") upon which approval of the Project was based.

Viejas also seeks a declaration that Respondent failed to comply with California law in that 1) the District approved the Project and allowed, and is poised to continue to allow, the destruction and desecration of a tribal burial ground and ceremonial place, 2) it failed to enforce mitigation measures set forth in the MMRP it adopted when it approved the Project, 3) it failed to consider significant new information and to prepare supplemental CEQA documents, 4) it threatens to impede the NAHC's jurisdiction and ability to carry out its statutorily mandated duties, 5) it has violated Section 7050.5 of the H&SC on numerous occasions, and 6) it has concealed evidence that it had knowledge of that was directly related to the potential cultural and environmental impacts of the Project such that the evidence was not provided to the public or made a part of the administrative record upon which the Project's MND was approved.

Viejas further seeks a temporary restraining order and preliminary injunction to stop Project construction pending a hearing on this matter, and an order that no further actions will be approved or taken by District without full compliance with California law based upon an environmental and cultural baseline as it existed prior the unlawful acts of the District.

PARTIES

1. Petitioner and Complainant Viejas Band of Kumeyaay Indians, one of the 12 remaining bands of the Kumeyaay Indian Nation, resides on a 1,600-acre reservation in the Viejas Valley, east of the community of Alpine, in San Diego County. The Viejas Band is recognized as a sovereign government by the United States, with which it maintains a government-to-government relationship. The Viejas Band also continues to share a joint-trust patent with the Barona Band of Kumeyaay Indians ("Barona") for the 15,000 remaining acres of the Capitan Grande Reservation, the heart of which Congress granted to the City of San Diego in the early 1900s over tribal protest, to build El Capitan Grande Reservoir, near Lakeside. The

1 Project is located on a 2.5 acre parcel in Lakeside, California, south of Ridge Hill Road and west
2 of Rios Canyon Road and just south of Interstate 8. The Project site is approximately 10-15
3 miles from the Viejas reservation, approximately 5-10 miles from the Capitan Grande
4 Reservation and is within Viejas' traditional territory.

5 2. For purposes of determining the appropriate disposition of human remains, grave
6 goods and ceremonial items discovered and yet to be discovered at the Project site, Petitioner
7 has been designated the most likely descendants ("MLD") under California law. Petitioner has
8 been delegated MLD responsibilities by the Kumeyaay Cultural Repatriation Committee
9 ("KCRC"), the entity originally designated as the MLD by the Native American Heritage
10 Commission ("NAHC") -- in whom the authority to designate the MLD is placed by Public
11 Resources Code § 5097.98. Viejas is a member tribe of KCRC.

12 3. Respondent and Defendant District is a public agency, governed pursuant to the
13 Municipal Water District Law of 1911 as a result of an election held on December 2, 1952. The
14 District provides wholesale water, retail water, recycled water, sewer and recreational services.
15 The District is the lead agency under CEQA responsible for evaluating the environmental and
16 cultural impacts of the Project. Further, as both the lead agency and the applicant for purposes
17 of the Project, the District is responsible for the continued implementation of the Project in a
18 manner that complies with CEQA, its own conditions of Project approval and the laws of the
19 State of California.

20 4. Venue is proper in this Court because the matter contains a CEQA action and the
21 human remains, grave goods, ceremonial items and the Project which are the subject of this
22 action are located near Lakeside, zip code 92021, in this County.

23 5. Petitioner does not know the true names or capacities of the persons or entities sued
24 herein as Does 1 through 10, and therefore sues these respondents by such fictitious names.
25 Petitioner will amend the Petition to set forth the names and capacities of said respondents along
26 with appropriate charging allegations when the same have been ascertained.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATUTORY BACKGROUND

CEQA ISSUES

6. CEQA must be interpreted "so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. App. 3d 247, 259. An environmental impact report ("EIR") is "aptly described as the 'heart of CEQA'" (an "environmental 'alarm bell'"); its purpose is to inform the public and responsible officials of environmental consequences before a decision is made on a project. *Laurel Heights Improvement Assoc. v. University of California* (1988) 47 Cal.3d 376, 392.

7. CEQA vests in the lead agency the responsibility to conduct an initial study and to determine in the first instance whether a project has the potential to significantly affect the environment. 14 C.C.R. § 15006(d), § 15063(c)(3). A key purpose of the initial study is to determine whether modification of the project could mitigate significant impacts so that a project may proceed without requiring preparation of an EIR. 14 C.C.R. § 15063(c)(3). "[A]n agency may not approve a project that will have significant environmental impacts if there are feasible alternatives or feasible mitigation measures that would substantially lessen those effects." *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal. App. 4th 425, 445-446 (citing Pub. Res. Code § 21002, §21081).

8. When an initial study "has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by ... the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment," the lead agency may prepare a mitigated negative declaration in lieu of an EIR. Pub. Res. Code §§ 21064.5, 21080(c)(2); 14 C.C.R. §§ 15369.5, 15070(b).

9. The likely presence of Native American human remains on a proposed project site is a potentially significant environmental effect under CEQA. The existence of a potentially

1 significant environmental effect triggers a requirement under CEQA to perform an
2 Environmental Impact Report ("EIR") or to incorporate mitigation measures into the project so
3 that it is no longer "fairly arguable" that a potentially significant environmental effect exists.
4 Based on the foregoing, the District knew, but did not disclose to the tribes or the public, that
5 there was evidence of the likely presence of Native American human remains, grave goods and
6 ceremonial items on the proposed Project site.

7 10. As part of the enforcement process, CEQA provides that a public agency must
8 adopt a mitigation monitoring and reporting program for any project that is approved on the
9 basis of an EIR or mitigated negative declaration to ensure that the mitigation measures that are
10 adopted will be implemented. Pub. Res. Code § 21081.6(a). "The reporting or monitoring
11 program shall be designed to ensure compliance during project implementation. (Ibid.) The
12 purpose of these [monitoring] requirements is to ensure that feasible mitigation measures will
13 actually be implemented as a condition of development, and not merely adopted and then
14 neglected or disregarded." *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.
15 App.4th 425, 445-446 citing *Federation of Hillside & Canyon Associations v. City of Los*
16 *Angeles* (2004) 83 Cal.App.4th at p. 1261.

17 11. Where a public agency has failed to comply with CEQA, the trial court must 1)
18 vacate the CEQA determination, finding or decision in whole or in part; 2) mandate that the
19 agency suspend specific activity until the agency complies with CEQA, if the court finds that a
20 specific project activity will prejudice the consideration and implementation of mitigation
21 measures or project alternatives and could result in an adverse physical environmental change;
22 or 3) mandate that the agency take specific action necessary to comply with CEQA. Pub. Res.
23 Code § 21168.9(a); *Lincoln Place*, 155 Cal. App. 4th at 451. A writ of mandate is an appropriate
24 means of compelling agency enforcement of mitigation measures. *Id.* citing Pub. Res. Code
25 § 21168.9, C.C.P. § 1085.

26 12. If project circumstances change or new information is discovered after the
27 adoption of a mitigated negative declaration, further environmental review is governed by Pub.
28 Res. Code § 21166, *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467. The agency

1 must determine whether a subsequent EIR, negative declaration, an addendum, or no further
2 documentation is required to be prepared. 14 C.C.R. § 15162(b).

3 STATUTORY BACKGROUND

4 OTHER ISSUES

5 13. Public Resources Code section 5097.9, provides, in relevant part, "No public
6 agency . . . using or occupying public property, or operating on public property . . . on or after
7 July 1, 1977, shall in any manner whatsoever cause severe or irreparable damage to any Native
8 American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine
9 located on public property, except on a clear and convincing showing that the public interest and
10 necessity so require."

11 14. Pursuant to Public Resources Code section 5097.94, The NAHC has the following
12 powers and duties:

13 g. To bring an action to prevent severe and irreparable damage to, or assure
14 appropriate access for Native Americans to, a Native American sanctified cemetery, place of
15 worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to
16 Section 5097.97 [providing for notification of commission by tribe of impending damage, see
17 below]. If the court finds that severe and irreparable damage will occur or that appropriate access
18 will be denied, and appropriate mitigation measures are not available, it shall issue an injunction,
19 unless it finds, on clear and convincing evidence, that the public interest and necessity require
20 otherwise. . . . In any action to enforce the provisions of this subdivision the commission shall
21 introduce evidence showing that such cemetery, place, site, or shrine has been historically
22 regarded as a sacred or sanctified place by Native American people and represents a place of
23 unique historical and cultural significance to an Indian tribe or community.

24 . . .
25 k. To mediate, upon application of either of the parties, disputes arising
26 between landowners and known descendants relating to the treatment and disposition of Native
27 American human burials, skeletal remains, and items associated with Native American burials.
28 The agreements shall provide protection to Native American human burials and skeletal remains

1 from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of
2 Native American burials, skeletal remains, and associated grave goods consistent with the planned
3 use of, or the approved project on, the land.

4 15. Pursuant to Public Resources Code section 5097.97, in the event that any Native
5 American tribe advises the commission that a proposed action by a public agency may cause
6 severe or irreparable damage to a Native American sanctified cemetery, place of worship,
7 religious or ceremonial site, or sacred shrine located on public property, or may bar appropriate
8 access thereto by Native Americans, the commission shall conduct an investigation as to the effect
9 of the proposed action. Where the commission finds, after a public hearing, that the proposed
10 action would result in such damage or interference, the commission may recommend mitigation
11 measures for consideration by the public agency proposing to take such action. If the public
12 agency fails to accept the mitigation measures, and if the commission finds that the proposed
13 action would do severe and irreparable damage to a Native American sanctified cemetery, place of
14 worship, religious or ceremonial site, or sacred shrine located on public property, the commission
15 may ask the Attorney General to take appropriate legal action pursuant to subdivision (g) of
16 Section 5097.94.

17 16. Pursuant to Public Resources Code section 5097.98, upon the discovery of Native
18 American remains, the landowner shall ensure that the immediate vicinity, according to generally
19 accepted cultural or archaeological standards or practices, where the Native American human
20 remains are located, is not damaged or disturbed by further development activity until the
21 landowner has discussed and conferred, as prescribed in this section, with the most likely
22 descendants regarding their recommendations, if applicable, taking into account the possibility of
23 multiple human remains. The landowner shall discuss and confer with the descendants all
24 reasonable options regarding the descendants' preferences for treatment. For the purposes of this
25 section, "conferral" or "discuss and confer" means the meaningful and timely discussion and
26 careful consideration of the views of each party, in a manner that is cognizant of all parties' cultural
27 values, and where feasible, seeking agreement. Each party shall recognize the other's needs and
28 concerns for confidentiality of information provided to the other.

17. Public Resources Code section 5097.98(d)(1) further provides that "[h]uman remains of a Native American may be an inhumation or cremation, and in any state of decomposition or skeletal completeness," and that (2) "[a]ny items associated with the human remains that are placed or buried with the Native American human remains are to be treated in the same manner as the remains, but do not by themselves constitute human remains."

18. Public Resources Code section 5097.98(e) provides, in relevant part, "whenever . . . the landowner or his or her authorized representative rejects the recommendation of the descendants and the mediation provided for in subdivision (k) of Section 5097.94, if invoked, fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American human remains with appropriate dignity on the property in a location not subject to further and future subsurface disturbance.

STATEMENT OF FACTS

19. Petitioner realleges and incorporates by reference each of the allegations set forth in paragraphs 1 through 18, inclusive, as if set forth in full herein.

20. In 2004, the District acquired the property that is now the site of the Project. To Viejas' knowledge, no cultural resources due diligence was conducted by the District at the time of acquisition.

21. A study dated April 2005 by PBS&J consultants for the Rios Canyon Ranch Water System Feasibility Study and its attachments reference several off-site alternatives for the Project. This off-site alternatives analysis was not part of the MND and was not otherwise provided to tribes or the public.

22. In 2006, the California Legislature enacted AB 2641 to amend Public Resources Code sections 5097.91 and 5097.98 relating to burial grounds. The legislature found that: California Native American human remains are not always located within the current boundaries of reservations and therefore are not always covered by the resource protection laws of tribal

1 governments and that the law's intent is to encourage landowners to consider preservation or
2 avoidance of native human remains, wherever feasible, and encourage culturally sensitive
3 treatment of such remains when preservation is not feasible. The law also made clear that
4 extended discussion between the landowner and the tribe may occur and provide a basis for
5 additional treatment measures. In recognition of the traditional practices of Southern California
6 Indians, the law recognized that human remains may be an inhumation or cremation and be in
7 any state of decomposition or skeletal completeness and therefore need not be a perfectly intact,
8 *in situ* skeleton.

9 23. In or about 2006 or 2007, the District's consultant Black & Veatch Corporation, the
10 Project engineers, retained a consultant, EDAW, Inc. ("EDAW"), to perform a cultural resources
11 survey for the Project site. At that time, the site, SDI-18472, was first recorded by EDAW. The
12 site form recognized that, "No human bones were identified in the excavation sample. However,
13 a large amount of potsherds were found, some of which appeared to have been burnt post-
14 production and could possibly include cremation containers." On information and belief, Viejas
15 alleges that an initial draft report recommended avoidance of the property and that the District
16 demanded that that recommendation be stricken from the later report.

17 24. In or about 2007, Carmen Lucas (Kwaaymii Laguna Indian) was hired by the new
18 Project archaeology consulting firm, ASM Affiliates, Inc. ("ASM"), to conduct Native
19 American monitoring services for the Project's archaeological testing plan. Ms. Lucas was
20 frustrated that no Native American was hired on the prior EDAW survey, as Native American
21 input into the survey could have revealed additional information about the property and its
22 nature. She was provided a Cultural Resources Testing Program Proposal from EDAW dated
23 July 10, 2007. On information and belief, Viejas alleges that a letter from ASM also
24 recommended avoidance of the property.

25 25. On September 22, 2007, Ms. Lucas sent a letter to ASM expressing Native
26 American Observations and Concerns about the site and additional testing plan. In her letter she
27 expresses several concerns including:
28

1 a. Why was the EDAW report not finalized and available to the Native
2 Monitor?

3 b. Why had the District not mowed the grass prior to archaeological testing in
4 order to allow the consultants to better understand the nature of the site and where to intelligently
5 place shovel test pits and testing units?

6 c. Why did the testing proposal and testing plan differ regarding transects
7 extending from the milling features?

8 d. Why the Project design was already drafted prior to archaeological testing
9 being completed?

10 e. Why did this Project design place major Project infrastructure on top of the
11 extensive milling feature which EDW had recommended for avoidance?

12 Ms. Lucas concludes in her letter that based on what she observed the site should be
13 avoided.

14 26. On September 23, 2007, Clint Linton (Santa Ysabel Indian), also a Project Native
15 Monitor, wrote a letter to the District and the NAHC conveying his Monitoring Report and
16 Recommendations, including: 1) a description of the potential for human remains given the dark
17 midden soil, 2) a recommendation that the site be treated as significant and avoided, 3) a
18 recommendation that if full avoidance cannot take place, that 100 percent data recovery using
19 water screening take place, and 4) that the site be nominated to the Sacred Lands File, pursuant
20 to Public Resources Code sections 5097.96, et seq.

21 27. Through a letter dated October 15, 2007, the District responded to Ms. Lucas' letter
22 dated September 22, 2007. The District stated it was "in the process of collecting information in
23 response to [her] concerns" and that the District "has not received any preliminary cultural
24 survey report or recommendations from any of its consultants." Attached to this letter was a
25 letter dated October 10, 2007 from the principal of EDAW to Black & Veatch relating, among
26 other things, that EDAW is providing assistance to the District in determining potential Project
27 alternatives. As part of this assistance, EDAW developed a scope of services for a program of
28 shovel test pits at the Project site to determine the spatial extent of the cultural resources, but that

1 the District elected to contract with ASM to conduct the testing, and that EDAW was, therefore,
2 preparing a survey report documenting their initial findings that would be submitted to the
3 District and ASM shortly.

4 28. The final draft EDAW report, dated October 2007, concluded that the site consists
5 of a habitation area with multiple milling features with associated artifacts and midden soils, and
6 that if site avoidance were not possible, an evaluation program would need to be developed and
7 implemented and would consist of a research design and testing program. On information and
8 belief, Viejas alleges that the District or its agents knowingly or recklessly prevented the EDAW
9 report from being put into final form. On information and belief, Viejas alleges that EDAW's
10 original recommendation to the District was to avoid impacts to the site.

11 29. By a report dated January 28, 2008, Black & Veatch provided the District with a
12 Site Alternative Comparison for Archaeological Area Disturbance. The comparison was
13 conducted to determine the disturbance that various alternatives would cause within the
14 identified archaeological area. These alternatives would have saved up to nearly sixty percent of
15 the archaeological area. On information and belief, Viejas alleges the District rejected these
16 alternatives largely to save between \$100,000 to \$200,000. This onsite alternatives analysis,
17 which pre-dated the MND, was not part of the MND nor was it provided to tribes, or the public
18 as part of the CEQA process or any other Project review process.

19 30. In February 2008, ASM prepared for Dudek and Associates and the District an
20 Archaeological Evaluation Report for the Project. The asserted purpose of this report was 1) to
21 evaluate the eligibility of the archeological site for the California Register of Historic Resources
22 ("CRHR"), 2) determine the site's horizontal boundaries within the parcel, 3) assess the potential
23 for subsurface archaeological deposits at the site, and 4) develop any necessary mitigation
24 measures for adverse impacts to historical resources. The report concluded that although the site
25 had been disturbed by both natural and modern human activities, 1) it retained scientific research
26 potential as well as possibly 2) contained heritage concerns for contemporary Native Americans,
27 and 3) the site appeared eligible for listing on the CRHR. The 2008 ASM report also stated that
28 the District directed Black & Veatch to evaluate several alternatives within the project property

1 for placement of the flow control facility, reservoir and pump station. The evaluation of those
2 alternatives was not part of the MND nor was it provided to the tribes or the public as part of the
3 CEQA process or other Project review process.

4 31. On March 29, 2008, two forensic canines surveyed the site in order to evaluate the
5 potential for human remains. The Institute for Canine Forensics report indicated that both dogs
6 gave their "trained alert" in the same location independently of each other and without the
7 handler's knowledge of what the other team had done. The location of the alerts was on the
8 lower rock formation. The report stated that the amount of grass on the property made a survey
9 of the exact location of the burial extremely difficult. As set forth further below and as
10 previously alleged, this information was not included as part of the MND nor was it provided to
11 the tribes or the public as part of the CEQA process or other Project review process.

12 32. A draft MND for the project that is the subject of this litigation, "The Eastern
13 Service Area Secondary Connection Project (Ridge Hill Road Facilities)" (the "Project") was
14 prepared by EDAW (who had been retained for the main CEQA document but not the later
15 cultural resource technical work) and released in August 2008. The Project, as described in the
16 MND, consists of a 2.5 million gallon water reservoir, a 12-million-gallon-per-day pump station,
17 a flow control facility (the "Primary Infrastructure") together with approximately 1 mile of new
18 36-inch pipeline and 0.6 mile of discharge pipeline (the "Pipeline Infrastructure"). The Primary
19 Infrastructure remained as originally shown in 2007 to Monitor Lucas, on top of the rock feature
20 which would be removed. The Pipeline Infrastructure is located west of the Primary
21 Infrastructure and north of Highway 8.

22 33. The MND states that the District would be able to meet district-wide demands
23 under the current conditions without the Project.

24 34. On August 8, 2008, the District issued a Notice of Completion for the Project.

25 35. The public review period for the Project was from August 8, 2008 to October 6,
26 2008.

27 36. By letter from the NAHC dated September 29, 2008, the District was informed,
28 among other things, that:

1 a. While a Sacred Lands File search was negative, that the Sacred Lands File
2 is not exhaustive and that local tribal contacts should be consulted from the attached list;

3 b. In some cases, the existence of Native American cultural resources may be
4 known only to local tribes;

5 c. Lack of surface evidence of archaeological resources does not preclude their
6 subsurface existence; and

7 d. Lead agencies should consider avoidance when significant cultural
8 resources are discovered during project planning or implementation.

9 37. The MND was to be approved by the District Board on October 14, 2008.
10 However, the public hearing date was postponed due to possible changes to the Project related to
11 change to a point of connection in the discharge pipeline. These changes apparently could not be
12 made as agreements with an adjacent proposed development (South Coast Development) had to
13 be formalized before the change could be made. The Project agenda's executive summary states
14 that if an agreement is reached, supplemental CEQA documents would be submitted to the
15 Board for its approval.

16 38. A MMRP was attached to the MND. The MND states that the mitigation measures
17 are designed to reduce any potentially significant impacts resulting from the Project to
18 insignificance and that these mitigation measures would be required to be incorporated into the
19 Project. The MMRP contains mitigation measures related to Air Quality, Biological Resources,
20 Cultural Resources/Paleontology, Hydrology and Water Quality and Noise. Yet, despite the
21 information from the Native Monitors, the canine survey and the NAHC, the MND failed to list
22 any potentially significant impacts to cultural resources; nor did the notice posted at the Office
23 of the County Clerk reveal any potentially significant impacts to cultural resources.

24 39. No evidence has been presented to Viejas or to the public that the District or its
25 consultants made any outreach to explain the Project to, or to gather information on cultural
26 resources from, local tribal governments during the CEQA document preparation, public review
27 or approval periods.

28 ///

1 40. Notwithstanding the knowledge of the District as to the likelihood of the presence
2 of a tribal burial ground and ceremonial place on the Project site, neither the MND nor any other
3 supporting documentation identified the existence of this potentially significant environmental
4 effect. Furthermore, no mitigation measures were included in the Mitigation Monitoring and
5 Reporting Program that were directed at reducing this adverse affect below the level of
6 significance.

7 41. None of these mitigation measures were designed to avoid or directly mitigate to
8 insignificance the potential impacts, known to the District but not to the public, or the actual
9 adverse effects of the Project on cultural resources and human remains. Rather, these measures
10 were designed only to monitor the site construction for the purpose of providing mitigation for
11 impacts to isolated finds discovered only after construction had commenced.

12 42. Data recovery investigations were conducted at the site between January 20 and
13 March 5, 2009.

14 43. In January 2009, due to the conditions of the soils, Native Monitor Lucas requested
15 water screening to properly recover potential human remains, especially those that were
16 cremated.

17 44. On January 29, 2009, Native Monitor Lucas met with ASM at their offices and
18 reminded them of her and Monitor Linton's prior letters regarding the need for site avoidance,
19 the lack of experience among the data recovery crew members and that she has found artifacts in
20 spoils on the ground near water screening that had been discarded by the crew.

21 45. In or about February 2009, Native Monitor Lucas requested that bone fragments
22 found onsite be properly identified.

23 46. On February 6, 2009, the Coroner's office performed first positive bone
24 identification.

25 47. On or about February 10, 2009, KCRC was named MLD by the NAHC. KCRC asks
26 that remains and grave goods be kept in an onsite, locked storage containers and that Native
27 Monitors be permitted to set aside from future spoils any of the artifacts they felt were grave
28

1 goods. Native Monitor Linton asks ASM to repatriate all the artifacts since they were coming
2 from a burial ground. ASM did not agree to repatriate those items.

3 48. March 9, 2009, Native Monitor Lucas again speaks to ASM at their office about the
4 property being a burial ground and that it not be desecrated.

5 49. March 30, 2009, during lab work an additional piece of human bone was identified
6 by a person unknown to Viejas.

7 50. Ultimately, 14 bone fragments were positively identified by the Coroner as human.
8 Another 204 pieces of calcined bone apparently were not provided to the Coroner for positive
9 identification but were set aside for repatriation at a later date.

10 51. Repatriation of the items from data recovery occurred on or around March 30,
11 2009.

12 52. In August 2009, ASM provided the District with a Data Recovery Excavations
13 Report for the Project. Among other things, the report states that:

14 a. It is possible that fragmented human remains are scattered throughout the
15 site deposit, both within and outside the core site area;

16 b. Fifty percent of the human remains discovered at the site during data
17 recovery were found outside the core area in the two test units done to see if human remains may
18 be outside the core area;

19 c. That the ceramic sherd density is one of the highest of any site in San Diego
20 County; and

21 d. An age range of A.D. 780 and 1910.

22 Other items found included beads, pipe fragments, arrowheads and quartz items indicating burial
23 and ceremonial items. Despite these finds, all of which presented new information as to potentially
24 significant environmental effects not disclosed in the MND nor prior studies available to the
25 public or tribes or included in the administrative record, the District did not, and has not,
26 conducted supplemental CEQA review as required by law.

27 53. The Data Recovery Report goes on to state that with the understanding that
28 complete hand excavation of cultural deposits is financially infeasible for the Project, as

1 approved, the District should work with the Native American community regarding the
2 disposition of unanticipated discoveries during project construction.

3 54. On August 28, 2009, KCRC representatives met with the District on the property to
4 discuss ideas about potentially putting a monument and plaque on the property. On information
5 and belief, Viejas believes that Monitor Lucas inquired to the District as to whether the issue of
6 the burial ground had been resolved. The District representative did not respond to her
7 personally, but instead used his cell phone and stepped away. When he returned, the meeting
8 ended without further discussion.

9 55. The Data Recovery Report was brought by the District to the September 3, 2009,
10 KCRC meeting, but not provided in advance. The District also showed a PowerPoint of the
11 Project at the meeting. The PowerPoint does not reference the total number of individual human
12 beings represented in the human bone identified at the property, nor does it reference the
13 unusually high density of pottery sherds at the site. It also incorrectly states that the canine study
14 was "inconclusive," and refers to the 204 pieces of calcined bone located at the site as "several".
15 None of the information that was omitted from the PowerPoint was conveyed orally or otherwise
16 by the District to the tribes at the KCRC meeting.

17 56. By letter dated September 14, 2009, the District thanked KCRC for meeting with it.
18 The letter describes the Project as being "the first of the series of capital improvement projects
19 that will provide a secondary water transmission feed that would enhance fire protection." It
20 goes on to say that it would welcome an "ongoing dialogue" with KCRC regarding possibly
21 preserving a portion of the rock outcrop as a possible memorial or educational monument to
22 Kumeyway cultural heritage and to discuss accommodating any onsite ceremonies that might be
23 appropriate prior to construction.

24 57. By email dated October 2, 2009, KCRC advised the District it would be sending it
25 a letter discussing its "many concerns" about the Project.

26 58. That letter, dated October 13, 2009, asked the District to schedule a meeting with
27 KCRC to discuss several concerns about the Project related to, among other things 1)
28 questioning why the site would be destroyed, 2) that the grass be cut and the forensic dogs be

1 permitted to come out again, 3) if any human remains are discovered that the area be hand
2 excavated and the soil be water screened, 4) that soil from prior and future excavations be placed
3 back onto the site, 5) that all artifacts that were recovered be repatriated to KCRC due to the fact
4 KCRC considers the site a cemetery, 6) a memorial wall/monument be built out of the milling
5 rock, 7) to allow time prior to construction for KCRC delegates to spend time on the land, and
6 8) expressing KCRC's intention to "preserve as much of this site as possible." On October 15,
7 2009, some KCRC delegates met with the District.

8 59. Through a letter dated October 27, 2009, the District informed ASM that after
9 receiving ASM's final data recovery report, the District received a request from KCRC to
10 repatriate all artifacts from the data recovery that were not considered grave goods by ASM,
11 because KCRC members consider the site to be a burial ground.

12 60. Through a letter dated November 12, 2009, the District wrote to KCRC
13 summarizing several items 1) that the grass had been cut at the site, 2) the forensic canines did
14 "alert" at two locations previously excavated during data recovery, 3) that Native Monitor Lucas
15 found additional artifacts at the site, 4) that the District is ready to excavate the areas of interest
16 shown by the forensic canines and repatriate the soils to KCRC, and 5) that KCRC would be
17 allowed to hold a ceremony onsite to "pay tribute to the human remains found onsite." The
18 District also asserted that it had completed all the requests from KCRC's October 13, 2009 letter,
19 except design of the monument.

20 61. On or about December 15, 2009, Frank Brown (Viejas Indian) went to the site to
21 determine if he would monitor the construction phase of the Project. It is Viejas' information
22 and belief that Native Monitors Lucas and Linton refused further site work as it would be a
23 spiritual violation for them to work on a Project being constructed on a tribal burial ground and
24 ceremonial place. Mr. Brown was extremely alarmed by what he saw at the property and
25 contacted the NAHC with his concerns.

26 62. On January 4, 2010, the NAHC sent a letter to Mr. Brown and Mr. Banegas (a
27 member of the Barona Band and Chairman of the KCRC), stating that KCRC still had authority
28 to make recommendations to the District as MLD, and if the District refused to consider

1 abandoning the Project and potentially destroying what the NAHC now considers a Native
2 American burial ground, that it supports legal action being taken against the District for
3 violating state cultural preservation and burial laws and that once an MLD has been designated
4 for a Project, that there shall always be an MLD for that Project.

5 63. On January 22, 2010, the District engineer sent a letter to Mr. Banegas stating his
6 view that "no further obstructions exist" to moving forward with the Project, that the site was the
7 "only available property" when it was purchased, and the geographical conditions and technical
8 constraints of the facilities "precluded any options" to avoid the current impacts on the site.

9 64. By letter dated February 8, 2010, KCRC informed the NAHC, the District and
10 Viejas that KCRC voted at its regular monthly meeting on February 4, 2010, to transfer the
11 MLD designation to Viejas in order for Viejas to conduct further review and make
12 determinations for the site.

13 65. At KCRC's and the District's request, on February 11, 2010, ASM allegedly
14 transferred the remaining, additional Project collection to Clint Linton, Native Monitor. Viejas,
15 the MLD, was not consulted by the District on this transfer.

16 66. On February 17, 2010, the Viejas Tribal Chairman sent a letter to the District's
17 Director of Engineering and Planning: 1) advising the District of the MLD designation transfer,
18 2) requesting that work stop on the Project; 3) stating the site is a Kumeyaay burial ground and a
19 ceremonial place; 4) requesting clarification on avoidance and mitigation measures; 5)
20 requesting all information on the location and conditions of human remains previously removed
21 from the site by District or its contractors; 6) requesting all CEQA documentation; and 7)
22 requesting a meeting with the District to discuss the same. An attachment to the District's NAHC
23 submission, discussed below, has a received date stamp of February 22, 2010 from the District's
24 legal counsel's office.

25 67. On information and belief, Viejas alleges that around February 22 and 23, 2010, the
26 blasting contractor did preparatory work and drilling at the milling feature in anticipation of
27 blasting the feature. Viejas, the MLD, was not consulted by the District on this activity. Viejas, the
28

1 MLD, has no knowledge of whether a Native Monitor was present for all or part of the blasting
2 work.

3 68. Not having received a response from the District, on February 24, 2010, the Viejas
4 Tribal Chairman sent a second letter to the District Director of Engineering and Planning again
5 requesting work stoppage and the provision of information. Viejas, the MLD, reiterated its
6 concerns from its earlier letter, its request to meet and its desire that only qualified cultural
7 monitors be at the site.

8 69. On February 24, 2010, the NAHC sent a letter to the District notifying it that the
9 District should cease activities relating to moving cultural features with explosives in light of the
10 prior request to stop work by Viejas. The letter references unlawful and malicious destruction of
11 a religious and cultural site and cites the penalties for such violations. The NAHC demanded that
12 that the District stop work until a complete analysis is made of the impact of the Project on
13 Native American cultural resources and that the assessment be conducted in full consultation
14 with Viejas.

15 70. On information and belief, Viejas alleges that also on February 24, 2010, the
16 blasting contractor added the expansion compound which would separate the milling feature from
17 the rest of the bedrock. Viejas, the MLD, was not consulted by the District on this activity.

18 71. On or about February 25, 2010, members of the Viejas and Sycuan Bands
19 performed a site visit and were extremely disturbed by how the site had been treated by the
20 District. Through a letter of the same date to Viejas, the District informed Viejas that it had
21 stopped work at the Project site.

22 72. On or about February 25, 2010, the District suspended construction on the Project.
23 Viejas believes that this suspension has continued through the filing hereof.

24 73. Through a letter dated March 2, 2010, from the District's legal counsel to the Viejas
25 Office of Legal Affairs, District's legal counsel inquired whether Viejas had received all the
26 requested documents.

1 74. Through a letter dated March 5, 2010, the Viejas Office of Legal Affairs responded
2 to District's legal counsel that all the items had not been provided and some that were, were
3 incomplete. Viejas also requested to meet with the District.

4 75. Through a letter dated March 10, 2010, the Viejas Tribal Chairman outlined to the
5 District's General Manager the potential methods for onsite redesign and mitigation measures to
6 better protect the tribal cultural resources. The letter also requested the District consider
7 preparing supplemental environmental documents pursuant to CEQA.

8 76. On March 11, 2010, Viejas and the District met. Viejas Office of Legal Affairs also
9 sent a letter to the District's legal counsel indicating that the District's legal counsel's lack of
10 response to document and meeting requests will hinder progress towards a resolution of the
11 matter.

12 77. Through a letter dated March 12, 2010, the District's legal counsel requested the
13 NAHC mediate the dispute within "no later than" two business days from the same date. A
14 letter of official notice was also sent from District's legal counsel to the Viejas Tribal Chairman.

15 78. Through a letter dated March 15, 2010, the NAHC, located in Sacramento,
16 responded that the requested date was not reasonable, but that mediation continued to be an
17 option.

18 79. On March 16, 2010, Viejas and the District met again. Through a letter of the same
19 date, Viejas Office of Legal Affairs expressed concern to the District's legal counsel regarding
20 the manner of handling possible human remains and grave goods that had been found at the
21 Project site during construction. Viejas also noted that because human remains have already
22 been positively identified from the site, that the Coroner be called to accurately identify any
23 suspect remains and made other recommendations for treatment as MLD to prevent potential
24 vandalism, theft or desecration.

25 80. On March 18, 2010, Viejas sent a letter to the NAHC requesting a sanctified
26 cemetery hearing pursuant to PRC section 5097.97 on April 6, 2010, the date of the next regular
27 NAHC Commission hearing.

1 81. On March 18, 2010, the Chairman of the Sycuan Band of Kumeyaay Indians sent a
2 letter in support of Viejas' designation as MLD and in support of the requested sanctified
3 cemetery hearing.

4 82. Through a letter dated March 22, 2010, Viejas Office of Legal Affairs provided the
5 District's legal counsel with the outline of the comprehensive tribal cultural resources evaluation
6 and recommended a consultant, pursuant to the District's request. Viejas as MLD also
7 recommended a consulting firm and listed seven potential Native Monitors as well as indicating
8 that the MMRP measures relating to reporting of human remains be followed.

9 83. Through an email dated March 24, 2010, Viejas Office of Legal Affairs responded
10 to the District's legal counsel that Viejas is willing to mediate but wants the parties exhaust their
11 efforts to resolve the situation less formally. Viejas has not been informed that the District has
12 withdrawn its request for NAHC mediation. Viejas continues to support NAHC mediation
13 between the District and Viejas. This email also reiterates Viejas' request for certain
14 information, which the District had yet to provide.

15 84. Through a letter dated March 25, 2010, the District's legal counsel responded to the
16 Viejas letter, asserting that no human bones have been found at the property during construction
17 starting in December 2009, admitting that bones were found during construction activity, but not
18 explaining how the bone identification process has worked in the field during construction.

19 85. On March 29, 2010, the NAHC issued a Staff Investigation Report that included:
20 1) An introduction to the issue, 2) Evidence of Native American burials at site, 3) Evidence of
21 cultural resources at site, 4) California Law and Native American burials, 5) California law and
22 Native American Cultural Sites, 6) Alternative to avoid impacts, and 7) Findings. The Report
23 also accepted the tribal determination that the site is sacred and eligible for the Sacred Land
24 Files inventory.

25 86. On April 1, 2010, Viejas sent a letter and attachments in support to the NAHC
26 action.

27 87. On April 5, 2010, the District sent a letter and attachments in opposition to the
28 NAHC action. Attached thereto is an unsigned declaration dated April 5, 2010, from the Native

1 Monitor Cuero during construction admitting that approximately three bone fragments were
2 uncovered and that he believed the bones were nonhuman. The declaration lacks foundation and
3 does not set forth any qualifications of the Monitor or crew to properly identify fragmented
4 human remains, nor is explanation made of why the Coroner was not called. The Native
5 Monitor also admits that a "number of artifacts" were uncovered during construction including
6 pottery, metates, hand stones and arrowheads. Neither KCRC (the former MLD), nor Viejas (the
7 current MLD), were contacted by the District regarding the identification or disposition of these
8 construction finds which may be grave goods or ceremonial items.

9 88. On April 6, 2010, the NAHC held a hearing on this matter at its regular
10 Commission meeting in Sacramento. NAHC staff presented its Investigative Report and
11 Recommendations and testimony was provided in support and in opposition to the
12 acknowledgement by the NAHC that the site is a sanctified cemetery and ceremonial place
13 pursuant to California law. Because there was no quorum, the Commission could not formally
14 act and the hearing was continued. However, a commissioner recommended that the District not
15 commence construction at the site until after the Commission rendered its decision. The
16 District's legal counsel agreed to take this recommendation back to the District.

17 89. On April 12, 2010, the District's legal counsel sent a letter to Viejas Office of
18 Legal Affairs stating that the District "remains committed to seeking resolution" with Viejas and
19 requesting a meeting to further those discussions. The letter requests that Viejas consider a
20 District proposal to reconfigure the Project to substantially avoid the core area.

21 90. On April 13, 2010, Viejas Office of Legal Affairs sent a letter to the District's
22 legal counsel listing out seven requests of the Tribal Council.

23 91. Through a letter dated April 23, 2010, the District's legal counsel again states the
24 District "remains committed to seeking a resolution" with Viejas and confirms the meeting
25 between the parties on April 29, 2010.

26 92. The continued NAHC hearing was noticed for May 12, 2010, in San Diego, but
27 because of a health emergency of one of the Commissioners, it had to be postponed.
28

1 93. Through an email dated April 28, 2010 to District's legal counsel, Viejas Office of
2 Legal Affairs requested clarification of what the District means by "core area" as there is nothing
3 in prior correspondence that defines it.

4 94. On April 29, 2010, the District and Viejas met to discuss potential alternatives to
5 the Project. The District failed to present any real alternatives at this meeting, but instead merely
6 presented a graphic indicating what the District believes is the core archaeological area they
7 could avoid directly impacting.

8 95. Through a letter dated May 3, 2010, the Viejas Tribal Chairman sent a letter to
9 President McMillan memorializing the meeting and that the onsite redesign attached to the
10 District's counsel's April 12, 2010, letter was not actually an on-site redesign alternative under
11 consideration by the District. Instead, the alternative was a preliminary design from 2008 that is
12 not relevant to what the District would consider proposing to us now.

13 96. Through an undated letter to the Viejas Tribal Chairman, delivered to tribal security
14 in the Viejas Casino parking lot on May 6, 2010 by the District's agent, District President
15 McMillan tried to "clarify" the efforts which have gone into the development and consideration
16 of onsite alternatives. It stated that if the District was unable to construct the Project at the
17 current site, it would likely kill the Project and this could also impact the District's ability to
18 provide water service to Viejas. The letter closed by appreciating the Chairman's stated desire to
19 open lines of communication between them and expressing hope that the parties can work
20 together to resolve the issues.

21 97. Through a letter dated May 13, 2010, the Viejas Tribal Chairman responded to
22 District President McMillan's undated letter regarding the availability of previously considered
23 off-site alternatives, the apparent lack of seriousness regarding proposed on site alternatives that
24 would be responsive to Viejas' concerns, the continued lack of response to Viejas' request for a
25 tribal cultural resources evaluation to be performed, and that, without additional information,
26 Viejas cannot assess whether the District's assertion that tribal cultural resources will be avoided
27 with an onsite redesign is reasonable particularly where the District's own reports indicate
28 otherwise.

1 98. On May 19, 2010, Viejas Office of Legal Affairs contacted the District's legal
2 counsel to explore whether the District would consider agreeing to a tolling agreement that
3 included a continued stay of Project construction. District legal counsel replied he would be
4 willing to present a tolling agreement to his client.

5 99. Through a letter dated May 21, 2010, from the District's legal counsel to the
6 NAHC, the District indicated that it would proceed with construction of the Project due to the
7 delay in scheduling the continued NAHC hearing and an asserted "impasse" in negotiations with
8 Viejas. The letter also described the District's plans "to remove all soil from the core area of the
9 cultural site . . . down to the bedrock depth of approximately four feet, and repatriate (sic:
10 reinter) it to the southwestern corner of the property ("Repatriation (sic: reinterment) Site)."
11 The letter also stated that a Native Monitor would be retained and that any additional cultural
12 resources or remains found on the site during construction would be "repatriated" to the
13 "Repatriation Site."

14 100. Through an email of May 21, 2010, Viejas Office of Legal Affairs contacted
15 counsel for the District to determine the date the District intended to start construction activity
16 and whether it would be according to the approved Project or some other alternative site plan.

17 101. Through an email dated May 26, 2010, the District's legal counsel advised Viejas
18 Office of Legal Affairs that the District declined to enter into a tolling agreement related to any
19 claims which Viejas may have against the District or to stay Project construction.

20 102. Through a letter dated May 27, 2010, to the District's legal counsel, the NAHC 1)
21 confirmed the June 17, 2010 hearing date, stated that it believed the analysis between the
22 District and the MLD, Viejas, had not been completed, and 3) urged the District to postpone
23 construction activity until all concerns between the parties were resolved. The NAHC stated
24 that it stands ready to assist as it committed in its March 2010 letter, including by way of the
25 District-requested mediation.

26 103. Through a letter dated May 27, 2010, the District's legal counsel sent a letter to the
27 NAHC acknowledging the NAHC's confirmation of the hearing date but stating that in light of
28

1 the delayed hearing date and the "recent impasse" with Viejas that the District has "no choice"
2 but to proceed with the Project on June 1, 2010.

3 104. Through a letter dated May 28, 2010 from the District President to the Tribal
4 Chairman in response to the Chairman's May 13 letter, the President states that the District 1)
5 intends to proceed with construction as originally designed and approved, 2) will not follow
6 Viejas' MLD recommendations, and 3) will have an unidentified Native Monitor on site, but not
7 one recommended by Viejas, the MLD.

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
9 **AND INADEQUATE REMEDIES AT LAW**

10 105. Petitioner realleges and incorporates by reference each of the allegations set forth
11 in paragraphs 1 through 104, inclusive, as if set forth in full herein.

12 106. Petitioner has exhausted all available administrative remedies. Petitioners have
13 expressed their objections orally and in writing to the District. District has stated that it will
14 resume construction on the Project as soon as June 1, 2010, if the contractor can mobilize. The
15 District has refused to enforce mitigation measures, or to conduct subsequent environmental
16 review as required by CEQA pursuant to Public Resources Code § 21166, and has also refused
17 to set aside the negative declaration in light of the District's intentional suppression of relevant
18 evidence.

19 107. Petitioner has advised the NAHC that District's Project construction which was
20 suspended on February 25, 2010 threatened to cause "severe or irreparable damage to a Native
21 American sanctified cemetery, place of worship, religious or ceremonial site." The District has
22 stated that it will resume construction June 1, 2010, if the contractor can mobilize, in spite of the
23 fact that the NAHC is fulfilling its mandatory statutory duty to conduct an investigation and hold
24 a special public hearing on the matter scheduled for June 17, 2010 in the City of San Diego.

25 108. The NAHC has urged the District, in a letter dated May 27, 2010, to postpone all
26 construction activity until "all concerns between the parties are resolved."

1 109. Petitioner has complied with the requirements of Public Resources Code § 21167.5
2 by mailing and faxing a written notice of commencement of this action to the District. A true
3 and correct copy of the notification is attached hereto as Exhibit 1.

4 110. In accordance with Public Resources Code § 21167.6, Petitioner shall request that
5 the District prepare the administrative record related to this action and will serve the District by
6 personal service within 10 business days of this filing with such request. A true and correct
7 copy of that request is attached hereto as Exhibit 2.

8 111. Petitioner has complied with the requirements of Public Resources Code § 21167.7
9 and C.C.P. § 388 by serving a copy of the original petition on the California Attorney General.
10 A true and correct copy of the notification is attached hereto as Exhibit 3.

11 112. Petitioner has no adequate remedy at law unless the Court grants the requested writ
12 of mandate requiring, among other things, the District:

13 a. To comply with all conditions of approval, all mitigation measures and the
14 Mitigation Monitoring and Reporting Program;

15 b. To stop construction of the Project and make the determination of new
16 evidence, changed circumstances and the need for additional CEQA review required by Public
17 Resources Code § 21166 and 14 C.C.R. § 15162(b);

18 c. To set aside its mitigated negative declaration, conduct additional
19 environmental study and prepare new environmental documents as required by law; and

20 d. To stop construction of the Project pending action of the NAHC in
21 accordance with Public Resources Code § 5097.97.

22 113. In the absence of such remedy, District's construction of the Project will continue
23 in violation of State law, the jurisdiction and authority of the NAHC will be subverted and
24 Petitioner and the People of the State of California will suffer irreparable harm because of the
25 significant adverse environmental and cultural impacts generated by the Project and of the
26 destruction and desecration of irreplaceable resources sacred to Petitioner.

27 ///

28 ///

FIRST CAUSE OF ACTION
(Failure to Proceed in a Manner Required by Law
Under CEQA)

114. Petitioner realleges and incorporates by reference each of the allegations set forth in paragraphs 1 through 113, inclusive, as if set forth in full herein.

115. Viejas alleges the District prejudicially abused its discretion and acted not in accordance with CEQA when it knowingly suppressed information that showed actual or potentially significant environmental effects and proceeded to adopt a MND without revealing those effects either in its MND or otherwise to the public and without studying and adopting feasible mitigation measures to avoid or reduce those effects.

116. By reason of the foregoing, the District is carrying out or has approved a project that may have a significant effect on the environment without having fully determined whether the project may have a significant effect on the environment or whether to require mitigation or alternatives that could reduce those significant effects. Therefore, the Court must set aside, void or annul the Project approval and all related environmental approvals.

SECOND CAUSE OF ACTION
(Failure to Conduct Subsequent Environmental Review and Prepare Subsequent
Environmental Documents under CEQA)

117. Petitioner incorporates by reference each of the allegations set forth in paragraphs 1 through 116, inclusive, as if set forth in full herein.

118. Viejas alleges that District prejudicially abused its discretion and acted not in accordance with Public Resources Code section 21166(c), among others, when following the discovery of significant new information of substantial importance, the existence of a tribal burial ground, grave goods and ceremonial items, found after project approval during archaeological data recovery, and before construction commenced, the District failed to conduct subsequent environmental review and prepare environmental documents.

119. By reason of the foregoing, the District is carrying out a project that may have a significant effect on the environment without completing required supplement environmental

1 review, and the Court must issue a writ of mandate to the District to proceed in a manner
2 required by law by preparing, considering and, as needed, approving subsequent environmental
3 documents before continuing with the Project.

4 **THIRD CAUSE OF ACTION**

5 **(Failure to Enforce its Mitigation Monitoring and Reporting Program as Required by**
6 **CEQA and Conditions of Project Approval)**

7 120. Petitioner incorporates by reference each of the allegations set forth in paragraphs 1
8 through 119, inclusive, as if set forth in full herein.

9 121. Pursuant to the adopted Mitigation Monitoring and Reporting Program for the
10 Project, certain activities are required to be undertaken as part of the Project including: 1) all
11 monitors are to keep daily logs, 2) proper identification and determination of bone type is to be
12 accomplished, and 3) the County Coroner/Medical Examiner is to be contacted if suspected Native
13 American remains are found.

14 122. District failed to comply with the mitigation measures set forth in the Mitigation
15 Monitoring and Reporting Program, because it failed to: 1) keep daily monitor logs, 2) have
16 qualified individuals make initial determinations regarding potential Native American remains,
17 and 3) contact the Medical Examiner/Coroner for positive bone identification on a number of
18 occasions when suspected human remains were discovered.

19 123. District has a clear and present duty to enforce its own Mitigation Monitoring and
20 Reporting Program. District has committed a prejudicial abuse of discretion and not acted in
21 accordance with the law by failing to implement these mitigation measures or halt construction
22 until it has contacted the Coroner and complied with all other requirements of law. Through its
23 actions and inactions, the District has potentially impacted additional human remains, grave goods
24 and ceremonial items.

25 124. By reason of the foregoing, this Court must issue a writ ordering the District to
26 cease and desist the Project and to comply with the law, as set forth herein, prior to any
27 recommencement of the Project.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH CAUSE OF ACTION

**(Failure to Proceed in a Manner Required by Law in Conferring with the Most Likely
Descendant (Pub. Res. Code § 5097.98))**

125. Petitioner incorporates by reference each of the allegations set forth in paragraphs 1 through 124, inclusive, as if set forth in full herein.

126. District has a clear and present duty under California law to negotiate in good faith with the MLD as to mitigation measures and recommendations following the discovery of multiple human remains and grave goods, pursuant to statutes including but not limited to Public Resources Code section 5097.98.

127. District has committed a prejudicial abuse of discretion and not acted in accordance with the law by failing: 1) to engage in and complete good faith negotiations with the MLD, 2) to continue to suspend construction until it has negotiated in good faith with the MLD so that damage to cultural resources can be avoided, minimized or mitigated to the extent feasible, and 3) to follow the recommendation of the MLD to conduct an adequate cultural resource survey to determine the extent of cultural resources, including multiple human remains and items associated with Native American burial, so that appropriate mitigation measures may be determined.

128. By reason of the foregoing, this Court must issue a writ to the District to cease and desist from the Project and to comply with the law by engaging in good faith negotiations with the MLD, as set forth herein, prior to any commencement of the Project.

FIFTH CAUSE OF ACTION

**(Failure to Proceed in a Manner Required by Law to Have the NAHC Mediate
Disputes with the MLDs (Pub. Res. Code § 5097.98(e))**

129. Petitioner incorporates by reference each of the allegations set forth in paragraphs 1 through 128, inclusive, as if set forth in full herein.

130. As set forth above, the District initiated mediation with the NAHC regarding its disputes with Viejas, the MLD. The District has failed to participate in that mediation in good faith and to receive the recommendations from the NAHC.

1 131. Notwithstanding the invocation of the NAHC's jurisdiction to mediate disputes
2 between a property owner (the District) and the MLD (Vicjas), the District has unilaterally and
3 arbitrarily and capriciously declared an impasse in: 1) the negotiation of the dispute between
4 itself and Vicjas, and 2) tried to avoid the jurisdiction of the NAHC to mediate the dispute
5 instead announcing the District's unilateral decision on how it intends to proceed at the site.

6 132. The District has unilaterally stated that it intends to reinter the human remains on
7 the site without satisfying the condition precedent required by Public Resources Code
8 section 5097.98(e) of receiving and rejecting the recommendations of the NAHC.

9 133. The District has a clear and present duty under Public Resources Code sections
10 5097.98 and 5097.94(k) to respect the jurisdiction and proceedings of the NAHC and not to
11 proceed unilaterally with construction prior to the NAHC conclusion of mediation and receipt of
12 any recommendations for mitigation from the NAHC.

13 134. By reason of the foregoing, this Court must issue a writ to the District to cease and
14 desist from the Project and to comply with the law by engaging in good faith mediation with the
15 NAHC and, failing a resolution of the dispute with the MLD, to obtain the NAHC's
16 recommendations and to then proceed in a manner prescribed by law.

17 SIXTH CAUSE OF ACTION

18 *(Failure to Proceed in a Manner Required by Pub. Res. Code § 5097.97)*

19 135. Petitioner incorporates by reference each of the allegations set forth in paragraphs 1
20 through 134, inclusive, as if set forth in full herein.

21 136. Pursuant to Public Resources Code section 5097.97, Vicjas advised the NAHC that
22 the District's Project may cause severe or irreparable damage to a Native American sanctified
23 cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public
24 (District) property. Having received this notification, the NAHC is required to hold hearing.

25 137. The NAHC staff has conducted an investigation as to the effect of the Project
26 which investigation has found that the District is threatening to cause severe and irreparable
27 damage to a Native American sanctified cemetery. The NAHC is scheduled to conduct a public
28

1 hearing on June 17, 2010 to determine if the Project would result in such damage. Following
2 that hearing, the NAHC may recommend mitigation measures for consideration by the District.

3 138. If the District fails to accept those mitigation measures, and if the NAHC finds that
4 the proposed action would do severe and irreparable damage to a Native American sanctified
5 cemetery, place of worship, religious or ceremonial site, or sacred shrine located on District
6 property, the NAHC can ask the Attorney General to take appropriate legal action pursuant to
7 subdivision (g) of Section 5097.94.

8 139. The District has a clear and present duty to respect the jurisdiction and proceedings
9 of the NAHC under Section 5097.97 and not to proceed unilaterally with construction prior to
10 the NAHC's conclusion of the pending hearing and receipt of any recommendations for
11 mitigation from the NAHC.

12 140. By reason of the foregoing, this Court must issue a writ to the District 1) to cease
13 and desist from the Project to allow the NAHC to exercise its jurisdiction to conclude its lawful
14 hearing and to determine whether to make recommendations the District and 2) if such
15 recommendations are forthcoming from the NAHC, to proceed in a manner prescribed by law.

16 SEVENTH CAUSE OF ACTION

17 (Failure to Proceed in a Manner Required by Pub. Res. Code § 5097.98(e))

18 141. Petitioner incorporates by reference each of the allegations set forth in paragraphs 1
19 through 140, inclusive, as if set forth in full herein.

20 142. The District has stated that it intends to proceed with construction of the project
21 and to bulldoze the soils containing cultural resources into a corner of the property.

22 143. The District's rejection of the recommendations of the MLD is arbitrary and
23 capricious, and the District's plan to bulldoze the cultural resources into a corner of its property
24 is not reinterment of the human remains and items associated with Native American human
25 remains with sensitivity and appropriate dignity as is required by California law. Any such
26 action would be arbitrary and capricious and would be a desecration of such human remains and
27 associated items.

28 ///

1 144. Furthermore, the District has proceeded in an arbitrary and capricious manner and
2 contrary to law by stating that it would record an unspecified document with unspecified terms
3 to assure that the location would not be subject to further and future subsurface disturbance.

4 145. By reason of the foregoing, this Court must issue a writ to the District to cease and
5 desist from the Project and to comply with the law by treating human remains and items
6 associated with human remains with appropriate dignity.

7 **EIGHTH CAUSE OF ACTION**

8 **(Failure to Comply with Health and Safety Code Section 7050.5)**

9 146. Petitioner incorporates by reference each of the allegations set forth in paragraphs 1
10 through 145, inclusive, as if set forth in full herein.

11 147. The District has a clear and present duty under Health and Safety Code Section
12 7050.5 to notify the Coroner on the occasion of each discovery of potential human remains, and
13 the District has arbitrarily and capriciously failed to do so.

14 148. By reason of the foregoing, this Court must issue a writ to the District to cease and
15 desist the Project and to comply with the law, as set forth herein, prior to any recommencement
16 of the Project.

17 **NINTH CAUSE OF ACTION**

18 **(Declaratory Relief)**

19 149. Petitioner incorporates by reference each of the allegations set forth in paragraphs 1
20 through 148, inclusive, as if set forth in full herein.

21 150. An actual controversy has arisen and now exists between Petitioner and
22 Respondent concerning Respondent's compliance with CEQA, whether it has proceeded in a
23 manner required by law, and whether Respondent's 1) failure to enforce mitigation measures,
24 and 2) failure to assess subsequent new information and determine whether subsequent
25 environmental documents should be prepared constituted a prejudicial abuse of discretion or a
26 failure to proceed in a manner prescribed by law.

27 ///

28 ///

1 151. Petitioner seeks a judicial determination and declaration that Respondent failed to
2 proceed in accordance with the law and proceeded arbitrarily and capriciously in approving
3 action to allow the construction of the Project.

4 152. A judicial declaration of the rights and duties of each party hereto is necessary so
5 that Petitioner can determine its rights and duties under the laws of the State of California.
6 Petitioner has no other plain, speedy, or adequate remedy at law in the absence of such a
7 declaration.

8 TENTH CAUSE OF ACTION

9 (Injunction)

10 153. Petitioner incorporates by reference each of the allegations set forth in paragraphs 1
11 through 152, inclusive, as if set forth in full herein.

12 154. As a proximate result of, among other things, Respondent's
13 a. suppression of relevant information that it was legally required to disclose,
14 b. failure to enforce its Mitigation Monitoring and Reporting program,
15 c. failure to assess subsequent new information and determine whether a
16 subsequent environmental documents should be prepared,
17 d. threat to resume Project-related construction prior to the completion of a
18 mediation and a hearing pending before the NAHC,
19 e. failure to provide information and negotiate in good faith with the MLD,
20 and
21 f. obstruction of the NAHC's performance of its duties both as to mediation
22 and in making a determination that the land on which the Project is being constructed constitutes a
23 "sanctified cemetery and ceremonial place," Petitioner and the public at large have and continue to
24 suffer great and irreparable harm, because environmental and cultural resources have been and
25 will again be destroyed and a burial ground and ceremonial place is being desecrated.
26 155. Petitioner cannot be fully compensated in damages and is without an adequate
27 remedy at law because: (a) the harm to the land and Petitioner's cultural and spiritual values
28 cannot be recompensed by damages, (b) the exact amount of any compensable damage suffered

1 by Petitioner and the public at large will be difficult to ascertain, (c) the public policies of the
2 State of California to protect, rehabilitate and enhance to the fullest extent possible the
3 environmental quality of the State and to protect Native American cemeteries and ceremonial
4 places will be frustrated and avoided, if District were to be allowed to continue construction of
5 the Project without complying with applicable laws as set forth herein.

6 156. The issuance of an injunction is not against the public interest and, indeed, furthers
7 the public interest to preserve and enhance the environment and cultural resources and to protect
8 Native American cemeteries and ceremonial places. Neither Respondents nor the public would
9 suffer harm if the Court ordered a halt of construction of the Project, which is only a redundant
10 water supply system and is not needed to prevent any immediate harm to the public or the
11 environment, pending a hearing on this matter. The public interest would be further enhanced
12 by removing incentives to agencies and applicants to attempt to avoid environmental review, and
13 the jurisdiction of the NAHC.

14 PRAYER FOR RELIEF

15 1. For a temporary stay or restraining order and preliminary injunction restraining
16 District from continued construction of the Project pending a hearing on this matter;

17 2. For a writ of mandate or injunction,

18 a. Enjoining or ordering the District to cease and desist from the Project until
19 it has complied with California law, including but not limited to, CEQA,

20 b. Enjoining or ordering the District to enforce and comply with the mitigation
21 measures and the District's Mitigation Monitoring and Reporting Program,

22 c. Enjoining or ordering the District to comply with Section 7050.5 of the
23 Health and Safety Code,

24 d. Enjoining or ordering the District to cease and desist from construction
25 unless and until lawful approval is obtained by the District after the consideration of new
26 information, changed circumstances and adoption of findings supported by substantial evidence,

27 e. Enjoining or ordering the District to cease and desist from the Project until
28 after the NAHC concludes its hearing process under Public Resources Code section 5097.97 and

1 recommends mitigation measures to District in accordance therewith and District makes a
2 determination regarding whether or not to adopt such mitigation measures,

3 f. Setting aside, voiding, annulling all Project approvals and the Mitigated
4 Negative Declaration and enjoining construction or the resumption of Project construction until
5 the Project is lawfully considered and approved under California law,

6 g. Requiring that any further environmental review be conducted with a
7 cultural and biological baseline as of a date prior to any of District's approvals of the Project or
8 any construction related thereto, and

9 h. Requiring that all adverse environmental effects from implementation of the
10 Project, including damage to cultural resources and archaeological or historic resources, be fully
11 restored, mitigated or compensated by the District;

12 3. For costs of suit;

13 4. For reasonable attorneys' fees and costs; and

14 5. For such other and further relief as the Court deems just and proper.

15
16 DATED: June 1, 2010

Respectfully submitted,

17 THE MCDONALD LAW FIRM, LC

18
19 By: 

20 Steven P. McDonald

21 Attorneys for the Viejas Band of Kumeyaay Indians
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Bobby L. Barnett, say:

I am the elected Chairman of the Viejas Band of Kumeyaay Indians, Petitioner in this action. I have read the petition and complaint. All the facts alleged therein not otherwise supported by citations to the record, exhibits, or other documents, or where specified on information and belief, are true to my own personal knowledge.

I declare under penalty of perjury that the above is true and correct under the laws of the State of California.

Executed on this 31st day of May, 2010 in Alpine, California.



Bobby L. Barnett
Chairman, Viejas Band of Kumeyaay Indians

EXHIBIT 1

1 Steven P. McDonald, State Bar No. 077368
2 Christopher J. Martin, State Bar No. 249129
3 THE McDONALD LAW FIRM, LC
4 7855 Fay Avenue, Suite 250
5 La Jolla, CA 92037
6 Telephone No.: 858.551.1185
7 Fax No.: 858.551.1186

8 Courtney Ann Coyle, State Bar No. 174934
9 LAW OFFICE OF COURTNEY ANN COYLE
10 1609 Soledad Avenue
11 La Jolla, CA 92037
12 Telephone No.: 858.454.8687
13 Fax No.: 858.454.8493

14 Kimberly R. Mettler, State Bar No. 231972
15 VIEJAS BAND of KUMEYAAY INDIANS
16 Viejas Office of Legal Affairs
17 5000 Willows Road
18 Alpine, CA 91901
19 Telephone No.: 619.659.1710
20 Fax No.: 619.659.1970

21 Attorneys for Petitioner and Plaintiff Viejas Band of Kumeyaay Indians

22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

Viejas Band of Kumeyaay Indians, a federally
recognized Indian Tribe,

Petitioner and Plaintiff,

v.

PADRE DAM MUNICIPAL WATER
DISTRICT, a public agency; and DOES 1
through 10, inclusive,

Respondents and Defendants,

Case No.

**NOTICE OF INTENT TO FILE A CEQA
PETITION**

TO RESPONDENT PADRE DAM MUNICIPAL WATER DISTRICT:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that Petitioner VIEJAS
BAND OF KUMEYAAY INDIANS ("Petitioner" or "Viejas") intends to file a petition for writ of

1 mandate and complaint for declaratory and injunctive relief against PADRE DAM MUNICIPAL
2 WATER DISTRICT ("Respondent" or "District") in the San Diego County Superior Court
3 regarding The Eastern Service Area Secondary Connection Project (Ridge Hill Road Facilities)
4 (the "Project").

5 The petition alleges that the District 1) failed to proceed in the manner prescribed by law in
6 adopting a Mitigated Negative Declaration for the Project; 2) failed to conduct subsequent
7 environmental review and prepare subsequent environmental documents upon discovering new
8 information regarding a new adverse environmental effect; 3) failed to follow and enforce
9 conditions of approval for the project contained in, among other things, the Mitigation Monitoring
10 and Reporting Program; 4) failed to confer with the Most Likely Descendant ("MLD") as required
11 by the Public Resources Code; 5) failed to proceed in a manner required by law to complete
12 mediation with the Native American Heritage Commission ("NAHC") regarding disputes with the
13 MLD; 6) failed to proceed in a manner required by law by threatening to destroy cultural resources
14 while a hearing on such resources is pending before the NAHC; 7) failed to proceed in a manner
15 required by law by arbitrarily and capriciously ignoring the recommendations of the MLD and
16 threatening to proceed to destroy cultural resources; and 8) failed to report the discovery of
17 potential human remains to the Coroner.

18 The petition will seek a writ of mandate, declaratory and injunctive relief, including the
19 following:

20 1. For a temporary stay or restraining order and preliminary injunction restraining
21 District from continued construction of the Project pending a hearing on this matter;

22 2. For a writ of mandate or injunction,

23 a. Enjoining or ordering the District to cease and desist from the Project until
24 it has complied with California law, including but not limited to, CEQA,

25 b. Enjoining or ordering the District to enforce and comply with the mitigation
26 measures and the District's Mitigation Monitoring and Reporting Program,

27 ///

28

1 c. Enjoining or ordering the District to comply with Section 7050.5 of the
2 Health and Safety Code,

3 d. Enjoining or ordering the District to cease and desist from construction
4 unless and until lawful approval is obtained by the District after the consideration of new
5 information, changed circumstances and adoption of findings supported by substantial evidence,

6 e. Enjoining or ordering the District to cease and desist from the Project until
7 after the NAHC concludes its hearing process under Public Resources Code section 5097.97 and
8 recommends mitigation measures to District in accordance therewith and District makes a
9 determination regarding whether or not to adopt such mitigation measures,

10 f. Setting aside, voiding, annulling all Project approvals and the Mitigated
11 Negative Declaration and enjoining construction or the resumption of Project construction until
12 the Project is lawfully considered and approved under California law,

13 g. Requiring that any further environmental review be conducted with a
14 cultural and biological baseline as of a date prior to any of the District's approvals of the Project or
15 any construction related thereto, and

16 h. Requiring that all adverse environmental effects from implementation of the
17 Project, including damage to cultural resources and archaeological or historic resources, be fully
18 restored, mitigated or compensated by the District;

19 3. For costs of suit;

20 4. For reasonable attorneys' fees and costs; and

21 5. For such other and further relief as the Court deems just and proper.

22
23 DATED: June 1, 2010

THE McDONALD LAW FIRM, L.C.

24
25 By: 

Steven P. McDonald

Attorneys for Viejas Band of Kumeyaay Indians
26
27
28

1
2 PROOF OF SERVICE

3 Vicjas Band of Kumeyaay Indians v. Padre Dam Municipal Water District, et al.
4 San Diego Superior Court Case No. _____

5 I, Kelly McDonald, declare as follows:

6 I am employed with The McDonald Law Firm, LC, 7855 Fay Avenue, Suite 250, La Jolla,
7 CA 92037. I am readily familiar with the business practices of this office for collection and
8 processing of correspondence for mailing within the United States Postal Service. I am over the
9 age of eighteen years, and am not a party to this action.

10 On June 1, 2010, I served the following:

11 NOTICE OF INTENT TO FILE A CEQA PETITION

12 on the below parties in this action by placing a true copy (copies) thereof in a separate envelope(s),
13 addressed as shown, for collection and mailing on the below indicated day pursuant to the
14 ordinary business practice of this office which is that correspondence for mailing is collected and
15 deposited with the United States Postal Service on the same day in the ordinary course of business.
16 Additionally, I served a true copy (copies) of the document(s) via facsimile on the below parties in
17 this action to fax number listed below. No error was reported by the fax machine that I used. A
18 copy of the record of the fax transmission is attached hereto.

19 James B. Gilpin, Esq.
20 Best Best & Krieger LLP
21 655 W. Broadway, 15th Floor
22 San Diego, CA 92101
23 Ph: 619.525.1300
24 Fx: 619.233.6118

25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct. Executed at La Jolla, California on June 1, 2010.

27
28 
KELLY McDONALD

THE McDONALD LAW FIRM, LC

7855 Fay Avenue, Suite 250
La Jolla, CA 92037
858.551.1185 / 858.551.1186 fx

FACSIMILE DOCUMENT

Date: June 1, 2010
To: James B Gilpin, Esq.
Company: Best Best & Krieger LLP
Facsimile: 619.233.6118
Confirming: 619.525.1300
From: Steven P McDonald, Esq.
Pages: 5 (including cover)
Message:

PRIVILEGED AND CONFIDENTIAL - All information transmitted hereby is intended only for the use of the addressee(s) named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient(s), please note that any distribution or copying of this communication is strictly prohibited. Anyone who receives this communication in error should notify us immediately by telephone and return the original message to us.

HP Officejet Pro L7700 All-in-one series

Fax Log to
THE MCDONALD LAW FIRM, LC
858.651.1188
Jun 01 2010 5:10AM

Last Transaction

Date	Time	Type	Station ID	Duration	Pages	Result
Jun 1	5:06AM	Fax Sent	10192330118	2:11	5	OK

EXHIBIT 2

1 Steven P. McDonald, State Bar No. 077368
2 Christopher J. Martin, State Bar No. 249129
3 THE McDONALD LAW FIRM, LC
4 7855 Fay Avenue, Suite 250
5 La Jolla, CA 92037
6 Telephone No.: 858.551.1185
7 Fax No.: 858.551.1186

8 Courtney Ann Coyle, State Bar No. 174934
9 LAW OFFICE OF COURTNEY ANN COYLE
10 1609 Soledad Avenue
11 La Jolla, CA 92037
12 Telephone No.: 858.454.8687
13 Fax No.: 858.454.8493

14 Kimberly R. Motler, State Bar No. 231972
15 VIEJAS BAND of KUMEYAAY INDIANS
16 Viejas Office of Legal Affairs
17 5000 Willows Road
18 Alpine, CA 91901
19 Telephone No.: 619.659.1710
20 Fax No.: 619.659.1970

21 Attorneys for Petitioner and Plaintiff Viejas Band of Kumeyaay Indians

22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

Viejas Band of Kumeyaay Indians, a federally
recognized Indian Tribe,

Petitioner and Plaintiff,

v.

PADRE DAM MUNICIPAL WATER
DISTRICT, a public agency; and DOES 1
through 10, inclusive,

Respondents and Defendants,

Case No.

**REQUEST TO RESPONDENT PADRE
DAM MUNICIPAL WATER DISTRICT
FOR PREPARATION OF RECORD**

Under Public Resources Code section 21167.6, Petitioner VIEJAS BAND OF
KUMEYAAY INDIANS requests that PADRE DAM MUNICIPAL WATER DISTRICT prepare
the record of Respondent's proceedings related to this action.

///

1 Petitioner requests that Respondent include in the record any and all documents or records
2 relating or pertaining to The Eastern Service Area Secondary Connection Project (Ridge Hill Road
3 Facilities, including, but not limited to:

- 4 1. All project application materials.
- 5 2. All staff reports and related documents prepared by the respondent public agency
6 with respect to its compliance with the substantive and procedural requirements of this division
7 and with respect to the action on the project.
- 8 3. All staff reports and related documents prepared by the respondent public agency
9 and written testimony or documents submitted by any person relevant to any findings or statement
10 of overriding considerations adopted by the respondent agency pursuant to this division.
- 11 4. Any transcript or minutes of the proceedings at which the decisionmaking body of
12 the respondent public agency heard testimony on, or considered any environmental document on,
13 the project, and any transcript or minutes of proceedings before any advisory body to the
14 respondent public agency that were presented to the decisionmaking body prior to action on the
15 environmental documents or on the project.
- 16 5. All notices issued by the respondent public agency to comply with this division or
17 with any other law governing the processing and approval of the project.
- 18 6. All written comments received in response to, or in connection with, environmental
19 documents prepared for the project, including responses to the notice of preparation.
- 20 7. All written evidence or correspondence submitted to, or transferred from, the
21 respondent public agency with respect to compliance with this division or with respect to the
22 project.
- 23 8. Any proposed decisions or findings submitted to the decisionmaking body of the
24 respondent public agency by its staff, or the project proponent, project opponents, or other
25 persons.
- 26 9. The documentation of the final public agency decision, including the final
27 environmental impact report, mitigated negative declaration, or negative declaration, and all
28 documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in

1 a statement of overriding considerations adopted pursuant to this division.

2 10. Any other written materials relevant to the respondent public agency's compliance
3 with this division or to its decision on the merits of the project, including the initial study, any
4 drafts of any environmental document, or portions thereof, that have been released for public
5 review, and copies of studies or other documents relied upon in any environmental document
6 prepared for the project and either made available to the public during the public review period
7 or included in the respondent public agency's files on the project, and all internal agency
8 communications, including staff notes and memoranda related to the project or to compliance with
9 this division.

10 11. The full written record before any inferior administrative decisionmaking body
11 whose decision was appealed to a superior administrative decisionmaking body prior to the filing
12 of litigation.

13 Petitioner will pay the reasonable costs of preparation of the record on notice of the
14 estimated costs of preparation.

15 DATED: June 1, 2010

THE McDONALD LAW FIRM, LC

16
17 By:



18 Steven P. McDonald

19 Attorneys for Viejaas Band of Kameyaay Indians
20
21
22
23
24
25
26
27
28

EXHIBIT 3

1 Steven P. McDonald, State Bar No. 077368
2 Christopher J. Martin, State Bar No. 249129
3 THE McDONALD LAW FIRM, LC
4 7855 Fay Avenue, Suite 250
5 La Jolla, CA 92037
6 Telephone No.: 858.551.1185
7 Fax No.: 858.551.1186

8 Courtney Ann Coyle, State Bar No. 174934
9 LAW OFFICE OF COURTNEY ANN COYLE
10 1609 Soledad Avenue
11 La Jolla, CA 92037
12 Telephone No.: 858.454.8687
13 Fax No.: 858.454.8493

14 Kimberly R. Mettler, State Bar No. 231972
15 VIEJAS BAND of KUMEYAAY INDIANS
16 Viejas Office of Legal Affairs
17 5000 Willows Road
18 Alpine, CA 91901
19 Telephone No.: 619.659.1710
20 Fax No.: 619.659.1970

21 Attorneys for Petitioner and Plaintiff Viejas Band of Kumeyaay Indians

22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

Viejas Band of Kumeyaay Indians, a federally
recognized Indian Tribe,

Petitioner and Plaintiff,

v.

PADRE DAM MUNICIPAL WATER
DISTRICT, a public agency; and DOES 1
through 10, inclusive,

Respondents and Defendants,

Case No.

NOTICE TO ATTORNEY GENERAL

To the Attorney General of the State of California:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.7, that on June 1, 2010,
Petitioner VIEJAS BAND OF KUMEYAAY INDIANS filed a petition for writ of mandate and
complaint for declaratory and injunctive relief against PADRE DAM MUNICIPAL WATER

1 DISTRICT ("District") in the San Diego County Superior Court regarding The Eastern Service
2 Area Secondary Connection Project (Ridge Hill Road Facilities) (the "Project").

3 The petition alleges that the District 1) failed to proceed in the manner prescribed by law in
4 adopting a Mitigated Negative Declaration for the Project; 2) failed to conduct subsequent
5 environmental review and prepare subsequent environmental documents upon discovering new
6 information regarding a new adverse environmental effect; 3) failed to follow and enforce
7 conditions of approval for the project contained in, among other things, the Mitigation Monitoring
8 and Reporting Program; 4) failed to confer with the Most Likely Descendant ("MLD") as required
9 by the Public Resources Code; 5) failed to proceed in a manner required by law to complete
10 mediation with the Native American Heritage Commission ("NAHC") regarding disputes with the
11 MLD; 6) failed to proceed in a manner required by law by threatening to destroy cultural
12 resources while a hearing on such resources is pending before the NAHC; 7) failed to proceed in a
13 manner required by law by arbitrarily and capriciously ignoring the recommendations of the MLD
14 and threatening to proceed to destroy cultural resources; and 8) failed to report the discovery of
15 potential human remains to the Coroner.

16 The petition will seek a writ of mandate, declaratory and injunctive relief, including the
17 following:

18 1. For a temporary stay or restraining order and preliminary injunction restraining
19 District from continued construction of the Project pending a hearing on this matter;

20 2. For a writ of mandate or injunction,

21 a. Enjoining or ordering the District to cease and desist from the Project until
22 it has complied with California law, including but not limited to, CEQA,

23 b. Enjoining or ordering the District to enforce and comply with the mitigation
24 measures and the District's Mitigation Monitoring and Reporting Program,

25 c. Enjoining or ordering the District to comply with Section 7050.5 of the
26 Health and Safety Code,

27 ///

28 ///

1 d. Enjoining or ordering the District to cease and desist from construction
2 unless and until lawful approval is obtained by the District after the consideration of new
3 information, changed circumstances and adoption of findings supported by substantial evidence,

4 e. Enjoining or ordering the District to cease and desist from the Project until
5 after the NAHC concludes its hearing process under Public Resources Code section 5097.97 and
6 recommends mitigation measures to District in accordance therewith and District makes a
7 determination regarding whether or not to adopt such mitigation measures,

8 f. Setting aside, voiding, annulling all Project approvals and the Mitigated
9 Negative Declaration and enjoining construction or the resumption of Project construction until
10 the Project is lawfully considered and approved under California law,

11 g. Requiring that any further environmental review be conducted with a
12 cultural and biological baseline as of a date prior to any of the District's approvals of the Project
13 or any construction related thereto, and

14 h. Requiring that all adverse environmental effects from implementation of the
15 Project, including damage to cultural resources and archaeological or historic resources, be fully
16 restored, mitigated or compensated by the District;

17 3. For costs of suit;

18 4. For reasonable attorneys' fees and costs; and

19 5. For such other and further relief as the Court deems just and proper.

20 A copy of the petition is attached to this notice.

21 DATED: June 1, 2010

THE McDONALD LAW FIRM, LC

22
23 By: 

Steven P. McDonald

Attorneys for Viejas Band of Kumeynay Indians

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

Viejas Band of Kumeyaay Indians v. Padre Dam Municipal Water District, et al.
San Diego Superior Court Case No. _____

I, Kelly McDonald, declare as follows:

I am employed with The McDonald Law Firm, LC, 7855 Fay Avenue, Suite 250, La Jolla, CA 92037. I am readily familiar with the business practices of this office for collection and processing of correspondence for mailing within the United States Postal Service. I am over the age of eighteen years, and am not a party to this action.

On June 1, 2010, I served the following:

NOTICE TO ATTORNEY GENERAL

on the below parties in this action by placing a true copy (copies) thereof in a separate envelope(s), addressed as shown, for collection and mailing on the below indicated day pursuant to the ordinary business practice of this office which is that correspondence for mailing is collected and deposited with the United States Postal Service on the same day in the ordinary course of business:

Office of the Attorney General
1300 I Street
Sacramento, CA 95814-2919
Telephone: 916.445.9555

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at La Jolla, California on June 1, 2010.



KELLY McDONALD